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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,796	03/07/2002	Jonathan D. Smith	RBC-101US	3409

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EXAMINER	
HAYES, BRET C	
ART UNIT	**PAPER NUMBER**
3644	

DATE MAILED: 11/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/092,796	SMITH, JONATHAN D.	
	Examiner	Art Unit	
	Bret C Hayes	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 October 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-55* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-55* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 – 11, 18, 39, 45 – 50, 54 and 55 are rejected under 35 U.S.C. 102(b) as anticipated by Stang, Elden J. and Birrenkott, Brian A., "Plant Growth Regulators Alter Fruit Set and Yield in Cranberry (*Vaccinium Macrocarpon Ait.*)", Acta Horticulturae 241, 1989, pp 277-283, (Stang et al.).

3. Stang et al. disclose: applying to cranberry plants a plant growth regulating compound such that the cranberries have a mature mass of less than about 0.6 grams/cranberry; the applying step being during the mid-bloom period; there being a single applying step; the composition being applied when about 50-100% of flowers have opened (bloom percentages); the active ingredient includes gibberellin; a solution including the composition is applied to the plants; the solution being an aqueous solution; the composition being GA_3; the concentration of composition within the solution is 25-100 ppm; and the application being by spraying.

4. Further, referring to Table 1, Stang et al. do state that the Mean fruit weight of the cranberries is 0.47g for GA_3 and 0.53g for GA_{4+7}. If a distribution is normal, we know the percentiles of the data; given a normal distribution, 68% of the data will fall between +/- one standard deviation from the mean. This would appear to indicate, statistically, most (68%) of the

cranberries having a weight less than about 0.6g, since both mean fruit weights are below the claimed less than about 0.6g.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 12 – 17, 19 – 38, 40 – 44 and 51 – 53 are rejected as unpatentable over Stang et al. as applied to claims 1 – 11, 18, 39, 45 – 50 and 54 above.

7. Regarding claims 12 – 17, 20 – 37, 40 – 44 and 51 – 53, Stang et al. inherently demonstrate that while the relationship between GA_3 ppm and Fruit Set (%), and GA_3 ppm and Fruit Weight (g) do not appear to be linear, it would be obvious to one of ordinary skill in the art, upon examination of Table 3, to discern a trend – that trend being: increasing GA_3 ppm would tend to increase Fruit Set (%) and decrease Fruit Weight (g). Stang et al. disclose the claimed invention except for the ranges specified in the claims. It would have been obvious to one having ordinary skill in the art at the time the invention was made to discern the trends, and further to experiment, in order to find the specific ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

8. Regarding claim 19 and 38, Stang et al. do not explicitly state the application being by ground-driven application equipment. However, it would have been obvious to one having

ordinary skill in the art at the time the invention was made to use ground-driven application equipment, since the equivalence of ground-driven application equipment and hand-carried application equipment, for example, for their use in the agricultural application art and the selection of any known equivalents to any spraying-type applicator equipment would be within the level of ordinary skill in the art.

Response to Amendments

9. The declarations under 37 CFR 1.132 filed 11 August 2003 are insufficient to overcome the rejection of claims 1, 20 and 39 based upon Stang et al. as set forth in the last Office action because: in view of the foregoing rejection of the entirety of the claims applied as above, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Response to Arguments

10. Applicant's arguments filed 9 October 2003 have been fully considered but they are not persuasive.

11. In response to the Applicant's arguments, 37 CFR § 1.111(cb) states, "A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the reference does not comply with the requirements of this section." Applicant has failed to specifically point out how the language of the claims patentably distinguishes them from the references.

Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan, can be reached at (703) 306 – 4159. The fax number is (703) 872 – 9306.

Charles T. Jordan

bh

10/30/03